IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

CRP.No. 1006 of 2006()

E.P.337/04 IN OS.2648/1999 of PRL.MUNSIFF COURT,THRISSUR

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REVN. PETITIONER/RESPONDENT AND JUDGMENT DEBTORS:

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1. C.KUMARAN, AGED 51 YEARS, S/O. CHATHAN,
   SENIOR TELEPHONE OPERATOR,
   ASSISTANT (G) SECTION, OFFICE OF THE GENERAL
   MANAGER, TELECOM, BSNL, COCHIN DEVASWOM BOARD
   BUILDING, THRISSUR.

2. K.R.JOSE, S/O. RAPPAI,
   TELECOM MECHANIC, ALAGAPPANAGAR EXCHANGE,
   TELECOM CENTRE, P.O.PUDUKKAD, THRISSUR DISTRICT.

BY ADV. SRI.K.B.MOHANDAS
SRI.K.A.SREEJITH
SRI.LELLULAL T.G.THUNDATHIL

RESPONDENTS:/PETITIONER /1ST RESPONDENT

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1. THE DHANALAKSHMI BANK LTD.,
   KOTTEKKAD BRANCH, THRISSUR.

2. RADHAKRISHNAN, S/O. KOCHUGOVINDAN,
   TELEPHONE MECHANIC, SUB INSPECTOR, PHONES(BSNL),
   OFFICE OF SUB DIVISION ENGINEER, BSNL,
   VADAKKANCHERY, THRISSUR.

BY ADV. SRI.NAGARAJ NARAYANAN

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 25/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.3571/06 IN CRP 1006/06

DISMISSED

25/1//2007

SD/-M.SASIDHARAN NAMBIAR,JUDGE.

//True copy//

SHW to Judge.

M.SASIDHARAN NAMBIAR,J.

C.R.P .NO.1006 OF 2006

Dated 25th January 2007

O R D E R

Petitioners are judgment debtors and respondent, the decree holder in O.S.2648/99. As per order dated 9/8/2006 executing court passed an order in E.P.337/04 which reads:

"Issue arrest warrant 14.11.2006."

Subsequently on 14/11/2006 following order was passed.

"Repeat arrest warrant with police aid" .

This petition is filed under Section 115 of Code of Civil Procedure contending that petitioners specifically contended that decree holder had earlier filed E.P.1501/01, whereunder Rs.42,000/- was realised by attachment of salary of petitioners and this was not credited in the execution petition. They have also raised a contention that they have no means to pay decree debt. It was contended that in spite of the contentions, executing court directed arrest by a non speaking order.

2. Before directing arrest of judgment debtors for realisation of decree debt, executing court is bound to consider the objections raised by judgment debtors that they have no means. As none of the contentions raised by petitioners were considered by the executing court, order of arrest passed against petitioners in E.P.337/04 is quashed. Principal Munsiff, Thrissur is directed to consider the objections raised by petitioners, including their case that amount already realised in the earlier execution petition was not credited to their account and pass appropriate orders in accordance with law.

Writ petition is disposed accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.